

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4937 of 1995

with

SPECIAL CIVIL APPLICATION No 5818 of 1995

and S.C.A. Nos. 5782, 5819, 5820, 5821, 5822, 5990, 6123,
6134 & 5123 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ARPITA J. AHUJA & OTHERS

Versus

STATE OF GUJARAT & OTHERS

Appearance:

MR BP TANNA for the petitioners
MR DA BHAMBHANIA for Respondent no.1.
MR NIGAM SHUKLA for Respondent no.2.
MR RJ OZA for G.P.S.C.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/08/96

ORAL JUDGEMENT

1. In all these Special Civil Applications the facts and grounds are same, and as such, the same are being disposed of by this common judgment.

2. The petitioners were appointed on urgent temporary basis on the posts of Tutors by the respondent-State in Health and Family Welfare Department at its different medical colleges in subjects pathology or physiology as the case may be. The urgent temporary appointments of the petitioners have been made after a local selection. It is not in dispute that the posts of Tutors at medical colleges are within the purview of Gujarat Public Service Commission. The requisition had been sent by the Government of Gujarat, Health and Family Welfare Department to the G.P.S.C. for making selection on the posts of Tutors in the subjects including the subject of pathology and physiology. This has been done in the year 1994. After receipt of this requisition, the G.P.S.C. invited the applications, and almost all the petitioners except one have applied for the post, but none of them has been selected. As temporary appointment of the petitioners was subject to the selection by the G.P.S.C, and the term of the appointment was also there that they will hold the post till regularly selected candidates are made available, the respondent-State, Health and Family Welfare Department decided to terminate their services. The petitioners approached this Court and the court has protected them by grant of the interim relief. The petitioners are continuing on the posts of Tutors under the interim relief granted by this Court. The details of the service particulars of the petitioners as well as other necessary details are as under:

Name Court Post Date of Whether Date Whether
(Dr.) Case with appoin- stay is of applied
No. subject tment contin- termi- to GPSC
ued nation or not
if yes,
what is
the
result

Arpita J Ahuja 4937/95 Tutor 19-2-94 Yes 16-6-95 Yes, Not
Patho- Selected
logy

Snehlata J 5123/95 Tutor 7-7-84 Yes 13-6-95 Not

Chaudhary Physio- Applied
logy

Sanjay Saxena 5782/95 Tutor 5-8-93 Yes 10-7-95 Yes, Not

Patho- Selected
logy

Mina Goswami 5818/95 " 31-7-93 Yes 10-7-95 "

Biren J Parikh 5819/95 " 9-12-93 Yes 10-7-95 "

Mohan N Amalani 5820/95 " 29-10-92 Yes 13-7-95 "

Rashmi D Patel 5821/95 " 2-1-93 Yes 10-7-95 "

Chhaya Dave 5822/95 " 27-7-93 Yes 10-7-95 "

Alka Shah 5990/95 " 28-6-94 Yes 10-7-95 "

Neeta C Mehta 6123/95 Tutor 19-2-94 Yes 10-7-95 "

Physio-
logy

Ashutosh N Joshi 6134/95 " 19-2-94 Yes _____ "

3. Shri B.P.Tanna learned counsel for the petitioners made his submissions with reference to the Special Civil Application No.4937 of 1995.

4. In Special Civil Application No.4937 of 1995, the order of termination of the services of the petitioner therein has been made on 16-6-1995. In pursuance of the said order, the petitioner was relieved on 20th June, 1995. Neither the petitioner nor the respondent has produced on record both the order of termination of the services of the petitioner and the order of her relieving from the post. During the course of arguments, a copy of the order of termination has been shown, and photostat copy of the same has been taken on the record. The order was sent to the petitioner from Gandhinagar at his college address by ordinary post on 16-6-1995. The order dt. 20-6-95 of relieving her from the post has been sent by the Dean of the faculty to the petitioner. It appears to be a case where the petitioner knowing all these facts, has evaded service of the order of termination of her services and order of relieving her

from the post. She filed this petition before this Court on 23-6-1995 and on the same day, a request has been made for urgent circulation. It was circulated on the same day. Notice was issued and ad-interim relief in terms of Para No.12B has been granted. The prayers made by the petitioner in the petition are as under:

- (a) Be pleased to issue a writ of mandamus or any other appropriate writ, order or direction staying the operation, implementation and execution of the impugned proposed termination order of the petitioner and be pleased to further direct the respondents to allow the petitioner to discharge her duties and draw her salary accordingly.
- (b) Pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to restrain the respondents from in any way interfering with the discharge of the duties of the petitioner as a Tutor in Pathology in Government Medical College, Surat, pursuant to the order at Annexure-A and draw her salaries accordingly.

5. The learned counsel for the petitioner contended that even if it is taken to be a case of urgent temporary appointment, the services of the petitioners could have been dispensed with only after giving a notice to them under Rule 30 of Bombay Civil Service Rules, which has not been given to any of the petitioners in the present case. It has next been contended that the persons junior to the petitioners were continued in the services whereas the services of the senior persons have been terminated. Even if it is a case of termination of services of temporary employee, the principle of last come first go should have been followed, which has not been done in the present case. Lastly, it is contended that even after adjusting all the selected candidates of the G.P.S.C on the posts of tutors in respective subjects, vacant posts more in number than the petitioners are still available. Shri Tanna states that the respondent, State of Gujarat has already made a fresh requisition again for the vacant posts of tutors in subjects pathology and physiology, and as all the petitioners are eligible for these posts, and they will apply for the posts as and when the advertisement is made by the G.P.S.C. and they have all the chances of selection, and as such, till the selections are made they should be allowed to continue in the services. Shri Tanna, learned counsel for the petitioners submitted that

in case this Court continues the petitioners on the post till fresh selections are made then in case, the petitioners or any of the petitioners is not selected by G.P.S.C, he or she will quit the office voluntarily even without any order of termination is passed.

6. On the other hand, Shri D.A. Bhambhania, the counsel for the respondent contended that the petitioners have no right to hold the post as their appointments were conditional appointments. Their appointments were subject to the condition that their services shall be terminated, no sooner the selected candidates are made available. The G.P.S.C. had made the selection in which the petitioners also applied and had taken the chance, but they were not selected, and as such, no illegality has been committed whatsoever by the respondent in terminating their services. It was the case of temporary arrangement on the posts on adhoc and temporary basis. The appointment on the post, which is within the purview of G.P.S.C. even on temporary basis could not have been made for a period exceeding 11 months and it could have been continued only when the G.P.S.C has given its concurrence which is not a case here. In support of his contention, the learned counsel for the respondent Shri Bhambhania placed reliance on the decision of this Court given in L.P.A. No.180 of 1995 decided on 13-6-1995. Shri Bhambhania contended that the termination of the services of the petitioners has been made as per the term of their temporary appointments, and as such the provisions of Rule 30 of the Bombay Civil Service Rules was not required to be followed. So far as the contention of the petitioners that the juniors have been retained in the services is concerned, Shri Bhambhania contended that the candidates were given the appointment on temporary basis after making the selection, but the petitioners have not applied for appointment, and as such, this plea is not available to them. However, Shri Bhambhania is unable to justify the action of the respondent of continuing some of the candidates, though they are having lesser length of service than the petitioners and they have also not been selected by the G.P.S.C. and were also not appointed on urgent temporary basis in second local selection.

7. Shri Bhambhania admits that the Government has already sent the requisition for the posts of tutors in the subjects pathology and physiology as stated by counsel for the petitioners. Shri Bhambhania further admits that the posts in the subjects, pathology and physiology are lying vacant in number more than the number of the petitioners. However, the prayer of the

petitioners to continue them to work on the post of tutor till the regular selection is made, has been hotly contested by the respondent.

8. With reference to the last contention made by the learned counsel for the petitioner, this court considered it to be appropriate to implead G.P.S.C. as party in one of the petition. On 9-8-1996, G.P.S.C was ordered to be added as respondent in Special Civil Application No.4937 of 1995.

9. Shri R.J.Oza is present for G.P.S.C. Shri Oza admits that the requisition for the posts of tutors in pathology and physiology has already been received by the Commission, but still it remains at the initial stage because certain queries have been put to the respondent-State regarding giving effect to the reservation quota etc. and on certain other matters, but the Commission has not received any reply so far. Shri Oza submits that until all the queries and doubts put by the Commission are cleared by the State Government, the Commission is not in a position to advertise the posts and make the selection. Only after these preliminaries are completed, the Commission will advertise the posts, scrutinise the applications received in response to the advertisement and making of the selection, and that will take a reasonable time. Shri Oza states that even with all command at the steering and accelerator of the Commission, the selection is not possible to be made atleast within six months.

10. Shri D.A. Bhambhania, counsel for the State of Gujarat concedes that the G.P.S.C. has put certain queries and doubts in the matter and that is pending for reply to be made by the concerned department of the Government. However, Shri Bhambhania states that there is no difficulty to resolve out all the doubts and queries within a reasonable time if necessary by sitting together of the officers of the Government and the Commission.

11. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The appointments of the petitioners were made purely on temporary and adhoc basis for a period of six months or till the post is filled in on regular basis or till further orders whichever is earlier. The further conditions of the appointment are to be noticed. It has been mentioned that service being purely on adhoc and temporary basis is liable to be terminated at any time. Another condition was that he or she has to apply to the

Gujarat Public Service Commission when the post is advertised by the Commission in future. If he or she fails to apply or fails to appear for interview or if he or she is not selected by the Commission then his or her services are liable to be terminated forthwith.

12. The appointment of the petitioners were fixed term appointment leaving apart, purely on temporary and adhoc basis. The services were liable to be terminated on the availability of the selected candidates by the G.P.S.C.. The petitioners have to apply for the post and as per the condition of the appointment where he or she fails to apply or he or she is not selected by the Commission then his or her services were liable to be terminated forthwith. Under the order dated 16th June, 1995 the services of the petitioner was terminated with immediate effect. The petitioner did apply for the post before the Commission, but she was not selected. Other petitioners except one did apply for the posts of tutors and they have also not been selected by the Commission. In their cases, identical orders have been passed on different dates. If we go by the condition of the appointment, the respondent has not committed any error or irregularity or illegality whatsoever in terminating the services of the petitioners. The services of the petitioners have been terminated in confirmity with the condition of their appointment. There are two conditions which operate in different fields. First condition was that the appointment was liable to be terminated on the availability of the selected candidates meaning thereby the petitioners have to make a room for the selected candidates, but there may be cases where the requisite number of the candidates qua the available vacancies may not be selected and even after adjusting all the selected candidates the posts may remain unfilled.

13. The counsel for the petitioners urged that when the posts were available even after adjusting all the selected candidates, the services of the petitioners could not have been terminated. But this argument is made by the counsel for the petitioner without reference to the last condition, as contained in the appointment order of the petitioners. The continuity on the post by the petitioners would have been only when they have been selected by the G.P.S.C.. In case the petitioners or any of the petitioners have not applied for the post when advertised by the Commission and if they or any of them applied but not selected then their services were liable to be terminated forthwith. The intention of the appointing authority while giving the temporary appointments to the petitioners was explicit and clear

that in the eventuality of non application for the post or non selection on the post, when the same has been advertised by the G.P.S.C., the services were liable to be terminated forthwith. In view of the aforesaid condition of the appointment of the petitioners, subject to which the petitioners have accepted the appointments, I do not find any substance in the contention of the learned counsel for the petitioners that the respondent has committed illegality in terminating their services. Availability of the post is of no consequence because another condition was of clearance of the petitioners by the G.P.S.C. i.e. the continuity was only on the selection and not otherwise. The post of tutor is within the purview of the G.P.S.C. and the regular appointment could have been made thereon on the recommendation of the Commission. Where a candidate was not selected by the G.P.S.C for the post, how there can be any justification in the claim of the person concerned to pray for his or her continuation in the service only on the ground that the posts still remain vacant. None of the legal or fundamental right of the petitioners are infringed in the present case. The order of termination of the services of the petitioners made by the respondent was perfectly legal and justified.

14. Here is a case where petitioners have filed the writ petition before this court in apprehension of their termination, but the fact which giving now is that much earlier to filing of these Special Civil Applications, the orders of termination have been made by the respondent and some of the petitioners have also been relieved from the posts also. It is a case where on the facts which have been brought on record, it can safely be inferred that the petitioners knowing well of the orders of termination have given out an impression before this court as if no orders have been passed. What the litigants feel in this State that after the receipt of impugned order the Court may not grant the interim relief in their favour. I fail to see any justification in this belief of the litigants. If a litigant makes out a case for grant of the interim relief certainly this court will protect, but merely on apprehension how the petitioners can be justified to pray for the interim relief. It is a case of the termination of services and challenge is made to the action of the respondent, terminating their services. So it may be a writ of certiorari and as such the Court has to quash the impugned order and same has to be filed. The writ petitions should have been filed only after receiving the order of termination so that the court may know and consider all reasons which are given by the authority for making of the orders of termination

of the services of the petitioner. The appointing authority has all the powers to terminate the services of the petitioners in accordance with law, but there cannot be any presumption that the authority will act contrary to the law in making of the order of termination of the services of the petitioners. The presumption otherwise of the official act is that it is done and performed in accordance with the law.

15. In the case of Smt. P.K. Narayani & Others Vs. State of Kerala & Others reported in 1984 (Supp) S.C.C. 212, the matter has been considered by the Supreme Court of the termination of services of the temporary and adhoc persons on the availability of the selected person from Public Service Commission. The Supreme Court has not found any right in favour of those class of persons, but a relief on sympathetic ground has been given to permit that class of persons to appear in the next Public Service Examination alongwith other candidates relaxing the age restriction for them. The Supreme Court has further made it clear that this relaxation given on sympathetic ground would not confer any right to them to continue in the service or of being selected by the PSC otherwise than in accordance with the relevant rules and regulations, nor would that operate as stay of the appointments of selected candidates. The order which has been made by the Supreme Court in the aforesaid case in para no.7 reads as follows:

We would like to make it clear that the order which we are passing today will not confer any right on the petitioners and the others who are similarly situated to continue in service, or of being selected by the Public Service Commission otherwise than in accordance with the relevant rules and regulations. We must also clarify that this order will not be construed as or operate as a stay of the appointment of candidates who have been already selected or who may hereafter be selected by the Public Service Commission.

In the case of M.D. Annie & Others Vs. State of Kerala & Others reported in 1987 (Supp) Supreme Court Cases 703 there was a case of identical nature as it was a case in Smt. P.K. Narayani & Others Vs. State of Kerala & Others (supra) the court has disposed of the matter by making the order as follows:

After hearing the learned counsel for both the parties we feel that the appropriate

order to be passed in this case should be in the same terms as Smt. P.K. Narayani v. State of Kerala. The State Government is directed to take steps as early as possible to ascertain the number of vacancies that will have to be filled up by resorting to recruitment through Public Service Commission. Immediately after such ascertainment the State Government shall write to the Public Service Commission to hold an examination to select candidates to fill up the vacancies. Until a selected candidate is able to join the post to which he is selected the ad hoc employee who is now working in any post shall continue in the post. This order does not confer any other type of right on the ad hoc employees. We hope that the entire process of selection and appointment of fresh candidates will be completed within six months from today.

If there are any candidates who are already selected by the Public Service Commission and who are not yet "advised to join" they may be issued such advices and on those candidates reporting for duty the ad hoc employees working in these posts shall vacate the posts. All the petitions are accordingly disposed of.

In the case of K. Suresh Kumar & Others Vs. State of Kerala reported in 1988 (2) S.L.R. 773 the matter has again been considered of the termination of services of the temporary employees appointed subject to regular recruitment through Public Service Commission. The services of those temporary employees have been terminated on preparation of the select list of the selected candidates by the Public Service Commission though appointment has not been made. The order of termination has been challenged by those persons, but the Supreme Court has declined to interfere in the matter. In the judgment, the Supreme Court has held in para no.2 as follows:

Heard learned counsel for the appellants So far as appellants Nos. 1 to 3 and 12 are concerned, their appointment was purely temporary and had been made by the Executive Engineer concerned subject to regular recruitment through the Public Service Commission. We find that the Public Service Commission has already undertaken recruitment

and the list has been prepared and since vacancies have now to be filled up by terminating services of these appellants, the regular recruits should be allowed to join on being appointed. In such circumstances, we refuse to interfere in respect of these appellants. So far as appellants nos.4 to 11 are concerned, it is stated that they were appointed by the Kerala Water Authority itself. One of the respondents herein and in regard to them the decision of this Court delivered in Civil Appeal Nos. 472-78 of 1988 shall operate for the reasons given therein and to the extent contained in that judgment. The appeal is disposed of accordingly. No costs.

In the case of State of Rajasthan Vs. Rajendra Kumar Rawat & Others reported in 1989 Supp (2) S.C.C. 268, the matter has again come up for consideration before the Supreme Court of the termination of service of the temporary employees who have been appointed with the condition of termination of their services on the availability of the regular selected candidates through the Public Service Commission. In that case, the temporary appointees have also offered themselves as a candidate before the Public Service Commission, but they have not been successful. The termination of the service of those persons was held to be justified by the Supreme court but there was a dispute that still after adjusting all the selected candidates, certain vacancies remains and as such, those persons should have been continued and they should have been given one more chance to participate in the next selection. There were two class of temporary appointees out of which services of some of the persons were not terminated whereas the services of others were terminated. In para no.8 of the judgment, the Supreme Court has held as under:

It has been stated before us by appellant's counsel that as on today the sanctioned strength of Legal Assistants is 126 but that is disputed on behalf of the respondents. It is difficult for us to determine the exact number and that must be left to the State Government. In the event of there being vacancies in the sanctioned posts the same would be available to be filled up under Rule 30. It has to be taken note of here that seven of the Legal Assistants were recruited in 1982 under Rule 30 and have been continuing with the periodic approval of the Public Service Commission. The rule nowhere contemplates regularisation of such

recruitment. Under Rule 30 the appointments are bound to terminate in the event provided in the proviso of the rule. Therefore, their continuance was not correct. The State Government shall take immediate steps to fill up the vacancies as required under the rules by sending the requisition to the Public Service Commission. On the basis of the determination of the exact number of vacancies, the State Government will have also to require the Public Service Commission to recruit for the remaining vacancies. Until such recruitment is made, the seven Legal Assistants who have been continuing from 1982 and are not parties to the proceedings may continue. For the remaining vacancies (after the reserve list is exhausted) the State Government is directed to appoint out of the persons who were already in service and whose services have been terminated following the rule indicated by the High Court, namely, those who have put in the maximum period of service shall be preferred. The State Government shall send the requisition to the Public Service Commission without delay and we direct the Public Service Commission to give priority to make the selection as early as possible. The judgment of the High Court is modified. The State Government shall make temporary appointment as directed above within four weeks. The civil appeals are disposed of with no order as to costs.

The Supreme Court has, in that judgment given the direction for filling up the remaining vacancies on temporary basis after the main list is adjusted out of the persons who are already in service and whose service has been terminated, following the rule namely those who have put in maximum period of service shall be preferred. In the case of Patel Ashokkumar Babulal Vs. State of Gujarat and others reported in 1996(2) G.L.R. Page 535, the matter has again been considered of the termination of the services of the persons who have been appointed on adhoc basis subject to the condition of the termination of the service on the availability of the selected candidates. This court has held that the persons appointed on adhoc basis on condition that their services would continue only till candidates selected by G.P.S.C. are made available, cannot claim right to continue when the candidates selected by G.P.S.C are made available. It is no more res integra that the persons who were appointed on temporary and adhoc basis on the condition

of the termination of their services, on the availability of the selected candidate have no right to continue in the service. Their termination of service is not questionable. They have to make a room for the selected persons. Here is a case as observed earlier, where one more important condition attached in the temporary appointment orders of the petitioners that on their non selection or in the case where they have not applied for service are liable to be terminated forthwith. In view of this condition, as stated earlier, their services are to be terminated and even the order of termination was not required. In fact, their services automatically comes to an end on the day on which the result has been declared by the G.P.S.C. of their non-selection. The petitioners should have forthwith relinquished their charge of post, but instead of doing so, on the other hand, they have approached this court. In view of the specific condition of their appointment and the fact that their services have already been terminated, there is no justification to continue them in service, but the fact that this court has protected them under the interim order and they are continuing till this date, the posts are still available after adjusting all the selected candidates from the main and waiting list, the petitioners fulfilling the requisite qualifications for the posts and the requisition for the posts of tutors for selection to be made by the Commission has already been sent by the State Government to the Commission, I consider it appropriate to continue these persons in the service till the G.P.S.C. made the selection on the posts for which the requisition has been sent by the Government. It is expected that the G.P.S.C. will hold the next selection as early as possible, preferably within a period of six months from the date of receipt of certified copy of this order or intimation of this judgement through its counsel, whichever is earlier.

16. The commission has been impleaded as party in one of the petition and Shri R.J.Oza, the counsel for the Commission has fairly made a statement that the Commission will make the appointments within the time as granted by this court. Shri Oza has apprehended that till all the difficulties and doubts raised by the G.P.S.C. are being cleared by the Government and clarification has been given to the satisfaction of the Commission, the posts cannot be advertised and no selection can be made. It is suffice to say that it is not such a matter which cannot be resolved out within a reasonable time. It is expected of the Commission and the State Government to expeditiously decide this issue and the State Government will give the clarification to

the satisfaction of the Commission. If necessary, it is advisable that the officers of the State Government and the Commission may sit together and resolve out all their difficulties and issues in the matter so that there may remain no impediment in the way of the Commission to proceed with the selection process expeditiously. Both the counsel for the State Government and the Commission are agreeable that these matters will be settled and resolved out expeditiously.

17. In the result, though no illegality has been committed by the respondent in termination of the services of the petitioners and the petitioners have no right to continue on the posts, but in view of the facts as noticed above in the judgment, the petitioners are allowed to continue on the posts till fresh selections are made. The petitioners shall apply for the posts as and when the same are advertised by the Commission, and if the petitioners or any of the petitioners is not selected in the select list published by the Commission, his or her appointment shall come to an end automatically without any order of termination. The Commission as observed earlier, will make the selection within a period of six months from the date on which the intimation of this judgment has been given to it by its counsel Shri R.J. Oza. Shri Oza is requested to send the intimation of this judgment to the Commission forthwith. Rule is discharged subject to the aforesaid condition. No order as to costs.

zgs/-